

## 5.8 DEVELOPMENT RESTRICTIONS

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In addition to remedial work to mitigate the impacts of past development in the Lake Tahoe Basin, restrictions (TRPA land use restrictions and State discharge prohibitions) on new development are also necessary for the protection of Lake Tahoe. To ensure that further development will not lead to further deterioration of water quality, the following development restrictions must be imposed:

- No new subdivision development except as permitted under the revised 208 Plan (TRPA 1988);
- No coverage on individual parcels in excess of the allowable percentage of impervious coverage set by the land capability system except as permitted under the Individual Parcel Evaluation System (IPES) and coverage transfer provisions of the 208 Plan;
- No further construction in Stream Environment Zones, with limited exceptions;
- No further construction in 100-year floodplains which are not also SEZs or below the high water rim of Lake Tahoe and its tributaries, with limited exceptions;
- No further development until offsetting erosion and urban runoff control projects are implemented; and
- No new pier construction in significant fish spawning habitat or immediately offshore of important stream inlets in Lake Tahoe, with limited exceptions (Figure 5.8-1).

The development restrictions called for in this Basin Plan may be implemented through zoning, land purchase, or water quality programs such as prohibitions. By whatever means the controls are implemented, however, and regardless of the implementing agency, implementation will require a procedure to apply the controls on a lot-by-lot basis. The Lahontan Regional Board will perform the review necessary to determine whether proposed applications are consistent with the development restrictions set by this plan, except for single family homes, and accessory structures, for which review

responsibility has been delegated to TRPA. The Regional Board may delegate review of other types of projects for consistency with the control measures below to TRPA without further Basin Plan changes. (TRPA has delegated review of single family residential projects to local governments through Memoranda of Understanding.) The Lahontan Regional Board shall require that the necessary information be submitted in reports for waste discharge requirements, which will apply the development restrictions.

The Tahoe Regional Planning Agency controls new development through its regional land use plan (TRPA 1987) and through the land use provisions of its 208 Plan. Controls are set to ensure attainment of a variety of TRPA “environmental threshold carrying capacity standards.” These “thresholds” include standards for soils, air quality, vegetation, fisheries, wildlife, recreational opportunities, noise, and scenic quality as well as for water quality. Under TRPA’s plans, and under the 1987 Regional Plan litigation settlement, the total amount of new residential, commercial, tourist commercial, public service and recreational development in the Lake Tahoe Basin is limited. TRPA periodically evaluates progress toward attainment of its environmental thresholds, and progress in accomplishment of the Capital Improvements and Stream Environment Zone Restoration Programs of the 208 Plan, and adjusts allocations for new development accordingly. Movement of the Individual Parcel Evaluation System (IPES) line to allow new development on more sensitive residential parcels within each local government jurisdiction also depends upon accomplishment of remedial work.

As noted in the “Offset” section of this Chapter, TRPA has a system of mitigation fees, offset requirements, and other provisions applicable to new development, or expansion/remodeling of existing development, which both mitigate the impacts of the new project and provide for offset of the impacts of earlier development in the Tahoe Basin.

The California discharge prohibitions related to discharges of earthen materials, which were adopted in the 1975 *Water Quality Control Plan for the North Lahontan Basin* and the 1980 *Lake Tahoe Basin Water Quality Plan*, also effectively limit new development in the Lake Tahoe Basin. These prohibitions will remain in effect as part of this Basin Plan even if the State Board chooses to rescind the

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1980 Lake Tahoe plan. Exemptions from the prohibitions, discussed below, are provided under limited circumstances for projects which benefit the public.

Both the California prohibitions and the TRPA land use restrictions serve to prevent the construction of additional excess impervious surface coverage, and to prevent or minimize disturbance of high erosion hazard lands, 100-year floodplains, Stream Environment Zones, and sensitive fish habitat. The development restrictions will prevent any major increase in erosion and urban runoff problems. Coupled with implementation of remedial erosion and urban runoff control projects, SEZ restoration projects, and onsite control measures including BMPs, the restrictions will ensure that nutrient and sediment loading to Lake Tahoe are reduced significantly below levels prevalent in 1980, when the development restrictions took effect. These restrictions will also greatly reduce the number of lots which may be used for residential or commercial construction. Because most subdivisions were created without regard to the land capability system and without regard to the need to protect SEZs, development of many of these lots will be precluded or delayed under these restrictions. There are a variety of options available to landowners who are unable to build on their property due to TRPA land use restrictions and/or Regional Board discharge prohibitions, including land purchase by a public agency, and transfer of development rights. These options are discussed below.

In general, areas outside of existing development will be those affected by restrictions on new subdivisions. Enforcement of coverage limitations set by the land capability system will effectively preclude or delay almost all development on lands classified as capability levels 1, 2, or 3. The Individual Parcel Evaluation System (IPES), approved as part of the revised 208 Plan, could eventually allow construction on up to 20 percent of the remaining vacant single family parcels in California which are classified as land capability 1a, 1c, 2, and 3. Construction continues to be precluded on SEZ (Class 1b) lots. (See the summary of the IPES in the section of this Chapter on land capability and coverage.)

Some "substandard areas" have lots too small to be developed within coverage limitations, or where existing development has not made adequate

provisions for roads or utilities. The 1988 revisions to the 208 Plan allow resubdivision of such areas. Development on high capability lands will be subject to coverage limitations set by the land capability system, but in most situations these limitations will not preclude development. Some high capability lands received IPES scores at least initially below the line between developable and undevelopable parcels. The 208 Plan estimates that, over 20 years, 4,080 new Tahoe Basin single family dwellings could be built in El Dorado County and 1,034 in Placer County.

### **Prohibitions**

State law authorizes the State and Regional Boards to set prohibitions against the discharge of waste in certain areas or under certain conditions. These prohibitions may apply to discharges to ground water or surface water or both (CA Water Code § 13280-13284). The Nevada State Environmental Commission also has the authority to establish discharge prohibitions.

The prohibitions related to new development in the Lake Tahoe HU which are summarized in Table 5.8-1 were adopted by the State Board in 1980. They apply in addition to other prohibitions against discharges of sewage, solid waste, and industrial waste, and against discharges within 100-year floodplains, which were adopted in the 1975 *Water Quality Control Plan for the North Lahontan Basin* or in earlier Regional Board policies. (See the full texts of these prohibitions in an earlier section of this Chapter.)

It is important to note that the Regional Board implements a **separate** set of waste discharge prohibitions in the Truckee River HU. The full texts of prohibitions which apply to the portion of the Truckee River HU within TRPA's jurisdiction are also given earlier in this Chapter. These include prohibitions related to septic system discharges and to 100-year floodplain discharges. The Regional Board has adopted exemption criteria for the 100-year floodplain prohibition which differ from those for 100-year floodplain discharges in the Lake Tahoe Basin. The Regional Board recognizes that TRPA applies the 208 Plan land use restrictions and exemption criteria for SEZ and 100-year floodplain projects within the portion of the Truckee River HU between the Lake Tahoe dam and the confluence of the Truckee River

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and Bear Creek, and that the 208 Plan provisions will be more stringent in some cases than the Regional Board's Basin Plan provisions for this area.

The 1980 exemption criteria for the prohibitions related to development in the Lake Tahoe HU have been revised to make them more consistent with TRPA's exemption criteria for its land use restrictions. These prohibitions shall be enforced by the Lahontan Regional Board through administrative orders, injunctions, and monetary penalties. Because ground water as well as surface water carries nutrients into Lake Tahoe, the prohibitions related to new development address discharges to both ground water and surface water. Definitions for important terms used in the prohibitions are given along with their full texts earlier in this Chapter.

The prohibitions do not directly prohibit the construction of new subdivisions, development of environmentally sensitive lands, or development which is not offset by remedial erosion control measures. The discharge of sediment and nutrients which results from such development is prohibited. If a person proposing a project can prove that it will cause no greater discharge than would result from development which is outside the areas addressed by the prohibitions and that it complies with other applicable control measures, the prohibitions do not apply. In practical effect, however, the prohibitions will preclude any new development which is not in accord with the development restrictions called for in this Basin Plan.

For example, the discharge or threatened discharge attributable to new development which does not comply with land capability is prohibited. If proposed development would create excess coverage, but would not create any discharge above that which would result from development which adheres to coverage limitations and other applicable control measures, the prohibition does not apply. (As noted in the section of this Chapter on land capability, above, coverage on a parcel which exceeds the Bailey system limits but which is in compliance with the coverage rules described in that section is **not** considered "excess" coverage in violation of discharge prohibitions.) The State and Regional Boards do not know of any currently available technology which would make it possible to construct excess coverage without causing an increase in

discharge of sediment and nutrients. The Lahontan Regional Board must allow a project proponent an opportunity to present evidence that the project will not result in a discharge in violation of the prohibition. The project proponent would have to prove there would be no discharge above that which would result from development which adheres to land capability coverage limitations and which incorporates the other BMPs called for by this Basin Plan. As noted in the section of this Chapter on Best Management Practices, BMPs such as drainage facilities are required for **all** land capability levels. Both increases in the levels of sediment and nutrients carried from a construction site in surface or ground water and increases in downslope erosion must be prevented to assure compliance with the prohibitions.

Remedial measures to control existing sources of erosion, which should be carried out whether or not new development is permitted, will not be taken into account in determining whether a project would result in violation of the discharge prohibitions. Base coverage allowances and maximum coverage limits for different types of development, as set forth in the TRPA Regional Plan (TRPA 1987) and Vol. I of the 208 Plan, are construed to be in accordance with land capability. (See the section of this Chapter on land capability and coverage rules.)

These prohibitions are not intended to prevent the implementation of the Individual Parcel Evaluation System for assigning development permits, sewer permits, and allowable coverage to single family residential lots. However, in its conditional certification of the revised 208 Plan (State Board Resolution 89-32), the State Board required advance notification of a change in the IPES line between developable and undevelopable parcels:

*"Upon notification of a proposed move in the IPES line, the State Board will assess the reasonableness of progress being made toward the revised 208 Plan's thresholds and interim targets, and in accordance with its responsibilities as a certifying agency under Section 208 of the Clean Water Act, make a determination regarding continued State Board certification of the revised 208 Plan."*

Changes in certification of the 208 Plan could lead to changes in the applicability of these prohibitions.

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The prohibitions related to new development do not apply to repair or replacement of an existing structure. For example, if a building or residence is destroyed by fire, a new building or residence could be built on the same lot. In addition, these prohibitions shall not apply to any new development holding a valid sewer permit issued before the October, 1980 date of approval of the *Lake Tahoe Basin Water Quality Plan* so long as all necessary approvals are obtained. BMPs will be required in these cases.

These prohibitions shall apply in addition to the other prohibitions against discharges to waters of the Lake Tahoe Basin which were adapted as part of the 1975 Basin Plan (e.g., the prohibition against direct discharges to surface waters; see the summary of prohibitions earlier in this Chapter).

These prohibitions shall be strictly enforced. No discharge shall be permitted in violation of the prohibitions related to new development. The Lahontan Regional Board will issue waste discharge requirements for construction projects in the Lake Tahoe Basin. The prohibitions related to new development can be enforced without issuing waste discharge requirements to individual projects, but waste discharge requirements can be used to apply the prohibitions. The Regional Board shall also prescribe requirements when development does not violate the prohibitions, but control measures are still needed to prevent erosion and surface runoff problems. Waste discharge requirements shall require new development to comply with the discharge prohibitions and to incorporate measures which limit erosion and surface runoff discharges to ground and surface waters to the levels which can be achieved by complying with the discharge prohibitions and by following BMPs. The Regional Board may waive discharge requirements when a permit issued by another agency sets adequate controls.

The prohibitions related to new development can be enforced through conditions in waste discharge requirements, NPDES stormwater permits, denial of water quality certification for Section 404 permits by the U.S. Army Corps of Engineers, and through conditions in grants and waste discharge permits issued to sewerage agencies.

### **Exemption Criteria—General Considerations**

Exemptions may be granted under certain circumstances to the discharge prohibitions related to new subdivisions, new development in SEZs or not in accord with land capability, new development which is not offset by remedial projects, 100-year floodplains, and development of new piers. (Also see Appendix B, Resolutions 6-90-22 and 6-93-08, for descriptions of exemption considerations.) These prohibitions shall not apply to any structure the Regional Board, or a management agency designated by the State Board to implement the Lake Tahoe Basin provisions of the *Water Quality Control Plan for the Lahontan Region*, approves as reasonably necessary:

- to control existing sources of erosion or water pollution
- to carry out the 1988 TRPA regional transportation plan
- for health, safety, or public recreation
- for access across SEZs to otherwise buildable parcels.

Under limited circumstances, the Regional Board may delegate authority to the Executive Officer to grant exemptions from these prohibitions.

Projects “to control existing sources of erosion or water pollution” are interpreted to include projects which enhance beneficial uses of water bodies, including wetlands. These may include erosion control projects, habitat restoration projects, wetland rehabilitation projects, and similar projects, programs and facilities.

Exemptions are permitted for projects which implement TRPA's 1988 transportation plan. However, the 1980 *Lake Tahoe Basin Water Quality Plan* is strongly opposed to exemptions for new highway construction to ease traffic congestion (see the section of this Chapter on roads and rights-of-way).

In Regional Board review of proposed exemptions for public recreation projects, the determination whether a project, by its very nature, must be built where construction would otherwise be impossible without

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violation of a prohibition shall be based on the kind of project proposed, not the particular site proposed. Exceptions will not be allowed for projects such as parking lots and visitor centers which do not by their very nature have to be located in Stream Environment Zones or other sensitive areas. The criteria in Table 5.7-3 were established in 1988 to aid making these determinations.

In Regional Board review of proposed exemptions for public health and safety projects, projects necessary to protect public health or safety shall include projects needed to protect the health and safety of occupants of existing structures, including private dwellings. Exceptions for public health and safety purposes shall not be granted to permit residential or commercial development of any vacant lot or parcel, however, nor shall the allowance of any exception for public health and safety purposes permit such development.

Projects involving creation of land coverage which is in excess of the Bailey land capability system limits, but which is in accordance with the coverage rules described earlier in this Chapter are not considered to be in violation of the discharge prohibitions against development involving excess coverage, and do not require specific exemptions.

The restoration requirements in the exemption findings below may be accomplished onsite or offsite by the applicant or another agency approved by the Regional Board and TRPA. Such restoration requirements shall be in lieu of any land coverage transfer requirement or TRPA water quality mitigation fee (TRPA Code of Ordinances Section 20.4.C). Only land which has been disturbed or which consists of hard coverage or soft coverage shall be eligible for credit for restoration. Restoration plans shall require restoration to cause the area to function in a natural state with provisions for permanent protection from further disturbance. Lands disturbed by the project and then restored are not eligible for credit. Permanent protection from further disturbance shall include, but not be limited to, recordation by the owner of deed restrictions, or other covenants running with the land, on a form approved by TRPA, against parcels in private ownership, permanently assuring the restoration requirements. The Regional Board and TRPA shall obtain appropriate assurance from public agency applicants that restoration requirements are met.

(See the discussions of coverage rules and offset programs above, for additional information.)

Construction in SEZs or on land capability Classes 1, 2, and 3 normally will require special conditions of project approval because of the sensitivity of these areas (208 Plan, Vol. VI, page 122).

### ***Restrictions on New Subdivisions***

Construction of new subdivisions causes major increases in sediment and nutrient loads. On low erosion hazard lands, subdivision construction will increase sediment yields 20-fold, and the increases on moderate and high erosion hazard lands are even greater. Close attention to land capability and installation of surface runoff management systems can reduce sediment yields. Even development on low erosion hazard land following Best Management Practices to control erosion and surface runoff will at least double sediment yields over natural levels.

New subdivisions disturb large areas for road construction and utility installation. Even before the first house is built, the average subdivision disturbs about 20 percent of the area. New subdivisions, therefore, yield a great deal more sediment per unit constructed than does construction of additional units in existing subdivisions. New subdivisions in the Tahoe Basin would cause a significant increase in sediment loads. Because of this, and because new subdivisions add far more sediment per unit than construction in existing subdivisions, no new subdivision in the Basin should be allowed. The State Board adopted the prohibitions against discharges or threatened discharges attributable to new subdivision, which is set forth in full earlier in this Chapter, in 1980. For purposes of implementing these discharge prohibitions any new development which involves construction of roads and utilities which have water quality impacts comparable those of a lot and block, multiple ownership subdivision is considered a new subdivision, even if the property remains under a single ownership.

The 208 Plan (Volume I, page 114) provides that no new division of land shall be permitted within the region which would create new development potentially inconsistent with TRPA's Goals and Policies. This policy does not consider the following divisions of land to be inconsistent when the result does not increase the development potential

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permitted by TRPA's Regional Plan:

- division of land for purposes of conveyance to a government agency, public entity, or public utility,
- division of land for cemetery lots,
- divisions ordered by a federal or state court as a result of an adversary legal proceedings (sic) involving TRPA,
- certain modifications or lot-line adjustments to existing subdivisions,
- certain conversions of existing structures to stock cooperatives, community apartments, condominiums, or other form of divided interest,
- redivision, adjustment, or consolidation within an existing urban area as part of a TRPA-approved redevelopment plan, or
- division of land through condominiums, community apartments, or stock cooperatives within an existing urban area in conjunction with a project involving transfer of development rights or otherwise in accordance with the Regional Plan, provided the project is approved prior to the approval of the division.

Only very limited subdivisions will be allowed under the 208 Plan. TRPA's intent is to avoid the impacts of new lot and block subdivisions while using mechanisms such as resubdivision to lessen the potential impact of existing approved but unbuilt subdivisions.

In approving a waste discharge permit for development involving any of the types of land division above which TRPA does not consider to be a "new subdivision," the Regional Board should make a finding that it is not a new subdivision which will lead to a discharge in violation of the prohibition.

### ***Restrictions on Development of High Erosion Hazard Lands***

Development of high erosion hazard lands poses a significant risk of major increases in erosion. Erosion rates more than 100 times natural background levels have been experienced in the Tahoe Basin. The revised 208 Plan could allow some construction of

single family homes on high erosion hazard lands under the Individual Parcel Evaluation System, if TRPA demonstrates that progress has been made toward attainment of water quality standards through other components of the total 208 Plan program. In certifying the 208 Plan revisions, the State Board requested advance notice of any plans to move the IPES line between developable and undevelopable parcels. After receiving such notification, the State Board will review TRPA's progress reports and determine whether to continue certification of the revised 208 Plan.

The section of this Chapter on land capability references TRPA's land use restrictions on development of land capability Class 1-3 lands. In general, TRPA allows such development only for residential construction approved under the IPES, and for public outdoor recreation and public service projects if specific exemption findings can be made. These findings are summarized in the 208 Plan (Vol. I, page 125).

The State's discharge prohibitions affecting Class 1a, 1c, 2 and 3 lands are related to land coverage which exceeds the land capability system limits, rather than to development of these lands *per se*. The TRPA exemption findings in the 208 Plan and in Ordinance Chapter 20 have been adapted as exemption findings from the discharge prohibitions. These findings are set forth below.

### ***Restrictions on Development Related to Coverage Limits***

All development results in some increase in erosion and surface runoff even when construction is limited to high capability lands. Impervious surface, disturbed terrain, and unvegetated areas all contribute to erosion and surface runoff. Increased coverage also interferes with the normal recycling of nutrients in the watershed by reducing uptake of nutrients by vegetation, resulting in increased nutrient loadings over and above those associated with increased erosion. These problems are most serious when the disturbed area exceeds the limits set by the land capability system. The land capability system and coverage rules are discussed earlier in this Chapter; the rules define the only circumstances under which impervious surface coverage can be allowed to exceed the limits of the Bailey land capability system.

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The section of this Chapter on land capability and coverage rules discusses allowable “base coverage”; coverage above the Bailey system limits which may be obtained by transfer; and mitigation of existing “excess coverage.” New land coverage on Class 4-7 lands which is in accordance with the coverage rules outlined in this section shall not be considered to be in violation of the prohibitions.

The Regional Board may grant exemptions from the discharge prohibitions for new development in excess of the land capability system limits on Class 1a, 1c, 2 or 3 lands only under the following circumstances:

- For public outdoor recreation facilities, when all of the following findings can be made:
  - (a) The project, by its very nature, must be sited in Land Capability Districts 1a, 1c, 2 or 3, such as a ski run or hiking trail (see Table 5.7-3 for additional criteria for this finding),
  - (b) There is no feasible alternative which avoids or reduces the extent of excess coverage in Land Capability Districts 1a, 1c, 2, or 3, and
  - (c) The impacts of the new development are fully mitigated through means including, but not limited to, application of BMPs and restoration of land in Land Capability Districts 1a, 1c, 2, and 3 in the amount of 1.5 times the area of land in such districts disturbed beyond the limits of the land capability system. (Exceptions to the restoration requirement shall be made as permitted in the 208 Plan; see the land capability section of this Chapter.)
- For public service facilities, when all of the following findings can be made:
  - (a) The project is necessary for public health, safety, or environmental protection,
  - (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of excess coverage in land capability Districts 1a, 1c, 2 and 3, and
  - (c) The impacts of new development are fully mitigated through means including, but not limited to, application of BMPs and restoration of land in land capability Districts 1a, 1c, 2, and 3. (Exceptions to the restoration requirement shall be made as permitted in the 208 Plan; see the land capability section of this Chapter.)
- For erosion control projects, habitat restoration projects, wetland rehabilitation projects, Stream Environment Zone restoration projects, and similar projects, programs and facilities, when all of the following findings can be made:
  - (a) The project, program or facility is necessary for environmental protection, and
  - (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in land capability Districts 1a, 1c, 2 and 3.

### ***Restrictions on Development and Disturbance in Stream Environment Zones***

To protect the natural treatment capacity of Stream Environment Zones, and to prevent channelized flows from causing erosion, encroachment of SEZs must not be allowed. (See the separate section of this Chapter on SEZ protection.) The Regional Board shall grant exemptions to the prohibitions against discharges or threatened discharges attributable to new development or permanent disturbance in SEZs only under the following circumstances:

- For public outdoor recreation facilities if all of the following findings can be made:
  - (a) The project by its nature must be sited in a Stream Environment Zone (in making this determination the Regional Board should use the criteria in Table 5.7-3);
  - (b) There is no feasible alternative which would reduce the extent of SEZ encroachment;
  - (c) Impacts are fully mitigated; and
  - (d) SEZs are restored in an amount 1.5 times the area of SEZ disturbed or developed for the

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project.

- For public service facilities if all of the following findings can be made:
  - (a) The project is necessary for public health, safety or environmental protection;
  - (b) There is no reasonable alternative, including spans, which avoids or reduces the extent of encroachment;
  - (c) The impacts are fully mitigated; and
  - (d) SEZ lands are restored in an amount 1.5 times the area of SEZ developed or disturbed by the project.
- For projects which require access across SEZs to otherwise buildable sites if all of the following findings can be made:
  - (a) There is no reasonable alternative which avoids or reduces the extent of encroachment;
  - (b) Impacts are fully mitigated; and
  - (c) SEZ lands are restored in an amount 1.5 times the area of SEZ disturbed or developed by the project.
- For new development in man-modified SEZs after the Regional Board has reclassified them according to the procedure described in the section of this Chapter on land capability.
- For erosion control projects, habitat restoration projects, wetland rehabilitation projects, Stream Environment Zone restoration projects, and similar projects, programs, and facilities, if all of the following findings can be made:
  - (a) The project, program, or facility is necessary for environmental protection;
  - (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in the Stream Environment Zone; and

(c) Impacts are fully mitigated.

Full mitigation of impacts, as used in the findings above, includes, but is not limited to, proper design and implementation of all applicable BMPs and the 1.5:1 restoration requirements. However, the 1.5:1 restoration requirement shall not apply to erosion control projects, habitat restoration projects, wetland rehabilitation projects or SEZ restoration projects.

### ***Restrictions on Development Not Offset by Implementation of Remedial Erosion Control Measures***

While the restrictions set above will hold down the level of erosion caused by development, further development will still cause some increase in sediment and nutrient loads. Even development on high capability lands, built according to Best Management Practices, will lead to some increase in surface erosion, as well as an increase in subsurface nutrient migration. With the quality of Lake Tahoe presently deteriorating, no new development can be tolerated unless it can be proven that water quality will not be affected. Water quality can still be protected if the development allowed by this plan is offset by construction of remedial erosion control projects and SEZ restoration projects.

The *Lake Tahoe Basin Water Quality Plan*, as amended, defines development not offset by remedial programs as “any new development for which mitigation work has not been performed or for which water quality mitigation fees have not been paid as required by the TRPA Code of Ordinances, Chapter 82.” The remedial programs discussed elsewhere in this Chapter provide a means of offsetting increased sediment and nutrient loads from permitted development. TRPA's land use and water quality plans will phase development based on the accomplishment of remedial programs and the attainment of environmental standards.

As long as the remedial offset programs of the 208 Plan are being implemented, the prohibitions against discharges or threatened discharges from development which is not offset will not be an issue in Regional Board review of individual projects. To ensure that the prohibition continues to be implemented on a regionwide basis, Regional Board staff should participate in TRPA's periodic reviews of progress on the implementation of remedial projects



in relation to allocations for new development.

### ***Restrictions on Development in 100-Year Floodplains***

See the separate section of this Chapter on 100-year floodplain protection.

### ***Restrictions on New Pier Construction***

See the discussion of control measures for pier impacts in the section of this Chapter on recreation.

### ***Land Purchase Programs***

Land purchase programs can also be used to prevent development which threatens the quality of Lake Tahoe. Two land purchase programs operate in California to purchase lots in stream environment zones or on high erosion hazard lands, or lots which cannot be used for residential or commercial construction without excessive coverage.

The State and Regional Boards strongly support the land purchase programs of the U.S. Forest Service and the California Tahoe Conservancy. The acquisition of environmentally sensitive single family residential lots by these agencies provides relief for owners of SEZ lots, or lots with low scores under the IPES, where development is prevented or delayed under the provisions of this Basin Plan. (Land purchase programs can also provide for payment of any outstanding utility assessments associated with the undeveloped property, providing relief for the utility as well as the landowner.)

The activation of the California Tahoe Conservancy was funded by a state bond act in 1982. The Conservancy has purchased thousands of sensitive single family residential lots with these funds, and has received additional funds for the acquisition of larger parcels. In addition, the California Tahoe Conservancy serves as a land bank to facilitate the coverage transfer programs which are part of TRPA's land use and water quality plans. The Conservancy also functions as a land bank for the transfer of development rights programs. Lands in the Tahoe Basin have also been purchased with State funds by other agencies, including the Department of Parks and Recreation.

The Santini-Burton program, implemented by the U.S. Forest Service, Lake Tahoe Basin Management Unit uses funds from the sale of federal lands near

Las Vegas to purchase sensitive single family parcels in both California and Nevada.

A City of South Lake Tahoe ordinance provides for the expenditure of up to five percent of the City's general revenues for purchase of open space and community parks. In implementing the ordinance the city is emphasizing purchase and preservation of fragile lands, especially stream environment zones.

An additional land purchase program for single family lots in Nevada was established by passage of a bond act in 1986. All those bond funds have now been spent. Nevada is considering additional funding for land acquisition in the Tahoe Basin.

Land conservancy programs implemented by private nonprofit organizations may also help to protect water quality in the Lake Tahoe Basin. The League to Save Lake Tahoe has established a separate land trust to acquire property in the Lake Tahoe Basin.

Property acquisition programs are the best long-term solution to the water quality problems posed by future development in the Tahoe Basin. Property acquisition provides a means of reducing or eliminating the financial impact on the individual lot owners who will be unable to build homes. Land purchase also brings the property into public ownership so that it may be managed to prevent water quality problems. This Basin Plan, therefore, strongly supports land purchase as a matter of policy. Land purchase is not constitutionally compelled. Although the issue is not free from doubt, courts have upheld restrictions on development where reasonably necessary to protect environmental quality, even where the restrictions left the property with little or no pecuniary value. To ensure protection of Lake Tahoe water quality, restrictions on development must be enforced. So long as restrictions on development are enforced, purchases should only be made on a willing seller basis.

TRPA's Individual Parcel Evaluation System (IPES) is closely related to the land purchase program. The IPES concept that all lots, except for those in SEZs, are potentially developable helps to prevent decreases in property value. At the same time, the IPES provides that the initially established line between developable and undevelopable lots will not move down until all but 20% of the sensitive lots in Placer, and El Dorado Counties, California, and all

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but 33 percent of sensitive lots in Douglas, Washoe, and Carson City Counties, Nevada, have been retired from development. The land purchase agencies are using IPES scores in setting future priorities for land acquisition.

A problem which must be addressed as part of any land purchase program is how the acquired properties will be managed. Proper maintenance is required to preserve the appearance of the site and prevent unauthorized use. One of the issues to be considered is what arrangements should be made to provide for management of acquired property. Properties could be managed by the USFS, the California Department of General Services, local governments, or public or private conservancy agencies. Lots purchased by one agency could be transferred to another to provide for consolidated management. Another alternative would be to encourage resale of purchased lots to neighboring property owners or homeowners' associations. The property could be purchased from the original landowner, then sold to adjacent property owners with deed restrictions to prevent development of the property, or use of the property to increase allowable coverage on other lands owned by the buyer. The assessed value of the property would be appropriately reduced.

Public agencies who have acquired sensitive lands with public funds in order to prevent the water quality impacts which would result from their development should be strongly discouraged from transferring these lands to other parties (including public agencies) for other public uses involving development (e.g., developed recreation or transportation), even if such uses might meet exemption criteria for discharge prohibitions.

As noted in the discussion of restrictions on discharges from new subdivisions, above, all development, even on less sensitive lands, with the application of BMPs, has the potential for increased sediment yield. If funds are available, additional land purchases, beyond those where development is prohibited under the plan, should be made in order to provide a margin of safety.

### ***Transfer of Development Rights***

Transfer of development rights provides another means by which the financial impact on lot owners of

restrictions on development can be reduced. The Regional Board strongly supports these programs as a means of mitigating the impacts of this plan on owners of undevelopable lots. In addition to the land coverage transfer program discussed in the section of this Chapter on land capability, TRPA allows transfer of development rights, residential allocations, existing "units of use" (e.g., hotel/motel rooms) and commercial floor space. The rules for such transfers are summarized in TRPA's Ordinance Chapter 34. They provide for permanent retirement or restriction from further development of sensitive lands from which development rights have been transferred. TRPA's Ordinance Chapter 35 provides "bonus unit incentives," in the form of additional allowable multifamily housing or tourist accommodation units, to developers who retire or transfer development from sensitive lands. (See the section of this Chapter on offset programs, above, for further discussion of some of these transfer programs.)

### ***Other Means of Relief for Landowners***

Lands in the Lake Tahoe Basin which are restricted from residential or commercial development may have other potential uses such as dispersed recreation or forestry, or wildlife habitat. The California Department of Forestry and Fire Protection operates the California Forest Improvement Program which provides technical and financial assistance to the owners of private forest parcels. The Department of Fish and Game has a wetlands protection easement program.

A few landowners who cannot build on their property because of restrictions against Stream Environment Zone encroachment may be able to receive payments through the federal Water Bank program. The Agricultural Stabilization and Conservation Service provides annual payments to landowners who agree to protect wetlands on their property. The program applies only to freshwater marshes and open water. The wetland area to be protected must be at least two acres, although several landowners may participate jointly.

### ***Affordable Housing***

Since 1980, some local governments have requested that the development restrictions discussed above be relaxed to facilitate the construction of affordable housing. The State and Regional Boards must

consider housing needs before adoption of water quality standards, but are not required to weaken water quality standards where there is a need to develop more housing within a region. In addition, under federal law, housing needs do not constitute a valid basis for weakening water quality standards for waters like Lake Tahoe which constitute an outstanding national resource. In the Lake Tahoe Basin, lowering water quality standards would not be an effective means of meeting housing needs. Much of the additional housing would be second homes, and almost none would be low income housing. Housing needs in the Lake Tahoe Basin should be addressed through more direct means than through modification of water quality controls. Strong incentives for low income housing, in the form of subsidies or priority for building and sewer permits are needed to overcome market conditions favoring higher income and second home housing.

The development restrictions related to discharge prohibitions in this Basin Plan still leave local and regional government some flexibility in deciding how much housing there should be. The restrictions are based on land capability and the extent of land disturbance. They do not specify how many units can be built. More units could be built if local and regional ordinances limiting the number of units allowed per lot are amended. Housing needs for persons working in the Basin will also be met in part by additional residential construction outside the Basin.

Local governments on the north and south shores of Lake Tahoe in California are implementing or considering redevelopment programs. California state redevelopment law requires redevelopment projects to include a proportion of affordable housing.

TRPA's regional land use plan (TRPA 1987) includes the goal of providing, to the extent possible, affordable housing in suitable locations for the residents of the Tahoe Region, and calls for special incentives to promote affordable or government assisted housing for low-income households. TRPA exempts eligible affordable housing projects from the requirement to have residential growth allocations, requires the community planning process to consider housing needs, and has bonus incentive programs to encourage the construction of multifamily housing.

**TABLE 5.8-1**  
**Summary of Discharge Prohibitions,**  
**Lake Tahoe Hydrologic Unit (HU)**

See the full texts of these prohibitions in the "Waste Discharge Prohibitions" section earlier in this Chapter. Some prohibitions apply to more than one of the categories below.

**General Prohibitions**

- Against discharges which violate water quality objectives or impair beneficial uses
- Against discharges which cause further degradation of waters where objectives are already being violated.
- Against discharges to surface waters of the Lake Tahoe HU

**Prohibitions Related to Sewage and Solid Wastes**

- Against discharges to cesspools, septic tanks or other means of waste disposal in the Lake Tahoe watershed after January 1, 1972 (with limited exceptions).
- Against discharges from boats, marinas, or other shoreline appurtenances (also applies to fuel spills, etc.)
- Against discharges of treated or untreated domestic sewage, industrial wastes, garbage or other solid wastes to surface waters.
- Against discharges of garbage or solid waste to lands.

**Prohibitions Related to Development**

- Against discharges or threatened discharges below the highwater rim of Lake Tahoe or within the 100-year floodplains of tributaries.
- Against discharges or threatened discharges attributable to new pier construction in significant spawning habitats or offshore of important stream inlets in Lake Tahoe.
- Against discharges or threatened discharge attributable to the development of new subdivisions.

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- Against discharges or threatened discharges attributable to new development which is not in accordance with land capability.
- Against discharges attributable to new development in Stream Environment Zones.
- Against discharges attributable to new development not in accordance with offset requirements.